

BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Seanna R. Brown  
Email: sbrown@bakerlaw.com

Presentment Date: February 10, 2015  
Time: 12:00 p.m.

Objections Due: February 10, 2015  
Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S APPLICATION FOR AN ORDER APPROVING  
THE RETENTION OF GOLDSTEIN & RUSSELL, P.C.  
AS SPECIAL COUNSEL NUNC PRO TUNC AS OF FEBRUARY 2, 2015**

Irving H. Picard ("Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"),<sup>1</sup> and the estate of Bernard L. Madoff (together, the "Debtor"), by and through his undersigned counsel, for his Application (the

“Application”) for authority to retain Goldstein & Russell, P.C. (“Goldstein & Russell”) as special counsel as of February 2, 2015, respectfully represents as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this Application pursuant to SIPA section 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this SIPA liquidation case and this Application are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 78eee(b)(3) of SIPA and sections 327(e), 328, 329 and 330 of the Bankruptcy Code and Fed. R. Bankr. P. 2014.

### **Background**

3. On December 11, 2008 (the “Filing Date”),<sup>2</sup> the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against defendants Bernard L. Madoff and BLMIS (together, the “Defendants”) (No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of BLMIS.

4. On December 12, 2008, the Honorable Louis L. Stanton of the United States District Court for the Southern District of New York entered an order which appointed Lee S. Richards, Esq., as receiver (the “Receiver”).

5. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- b) appointed Baker & Hostetler LLP as counsel (“Counsel”) to the Trustee pursuant

---

<sup>1</sup> For convenience, future reference to SIPA will not include “15 U.S.C.”

<sup>2</sup> See section 78lll(7)(B) of SIPA.

to section 78eee(b)(3) of SIPA; and

- c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA.

6. On December 8, 2014, the Second Circuit issued its decision, *In re Bernard L. Madoff Inv. Sec. LLC*, No. 12-2557-bk(L), 2014 WL 6863608 (2d Cir. Dec. 8, 2014), regarding the application of section 546(e) of the United States Bankruptcy Code to numerous avoidance actions filed by the Trustee. The Second Circuit held that the transfers at issue are covered by section 546(e) because they were made “in connection with a securities contract” and the transfers are “settlement payments.” The Second Circuit’s decision precludes the Trustee from recovering billions of dollars for the benefit of former BLMIS customers as well as general creditors of the BLMIS estate. The Trustee will file a petition for a writ of certiorari in the Supreme Court that seeks review of the Second Circuit’s ruling. A successful petition for a writ of certiorari requires knowledge of and expertise in Supreme Court practice. As such, the Trustee has determined that it is in the best interest of the estate to retain Goldstein & Russell, P.C. to assist Baker & Hostetler with the preparation and filing of the petition. The Trustee will coordinate efforts between Goldstein & Russell and Baker & Hostetler so that there will be no duplication of efforts.

#### **Relief Requested**

7. Retention of Goldstein & Russell is necessary to assist the Trustee with the filing of a petition for a writ of certiorari in the Supreme Court. Such assistance will enable the Trustee to carry out his duties in this SIPA liquidation proceeding. The Trustee, therefore, proposes to retain and employ Goldstein & Russell as its special counsel with regard to the petition for a writ of certiorari effective *nunc pro tunc* as of February 2, 2015.

8. The Trustee seeks to retain Goldstein & Russell as special counsel because of its knowledge and expertise in Supreme Court practice, including petitions, merits briefs and oral argument.

9. The services of Goldstein & Russell are necessary and essential to enable the Trustee to execute faithfully his duties herein.

10. Goldstein & Russell has indicated a willingness to act on the Trustee's behalf to render the foregoing professional services.

11. The Trustee submits that Goldstein & Russell's provision of professional services to the Trustee is permissible under section 78eee(b)(3) of SIPA and is in the best interest of the Debtor's estate and customers and creditors.

12. To the best of the Trustee's knowledge, and except as disclosed in the declaration of disinterestedness of Goldstein & Russell partner Thomas C. Goldstein, executed on February 3, 2015 and annexed hereto as Exhibit A, the partners of Goldstein & Russell are disinterested pursuant to section 78eee(b)(3) of SIPA and do not hold or represent any interest adverse to the Debtor's estate in respect of the matters for which Goldstein & Russell is to be retained.

Goldstein & Russell will be compensated at agreed upon rates, listed below, which reflect a reduction of its normal rates by ten percent (10%). Applications for compensation to Goldstein & Russell will be filed with this Court pursuant to applicable statutes and rules and application orders of this Court. Goldstein & Russell's rate information is as follows:

<b>Attorney</b>	<b>Standard Rates</b>	<b>Discounted Rates</b>
Thomas C. Goldstein	\$1,100.00	\$990.00
Partners	\$700.00	\$630.00
Associates	\$550.00	\$495.00
Paralegals	\$100.00	\$90.00

13. SIPC has no objection to this Application and, pursuant to SIPA section 78eee(b)(3), SIPC specifies that the Trustee should be authorized to retain Goldstein & Russell as special counsel for the purposes identified herein.

**Notice**

14. Notice of this Application will be provided by U.S. Mail, postage prepaid or email to (i) all parties included in the Master Service List as defined in the Order Establishing Notice Procedures (ECF No. 4560); (ii) all parties that have filed a notice of appearance in this case; (iii) the SEC; (iv) the IRS; (v) the United States Attorney for the Southern District of New York; and (vi) SIPC, pursuant to the Order Establishing Notice Procedures (ECF No. 4560) (collectively, the "Notice Parties"). The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Application; (b) authorizing the Trustee to employ Goldstein & Russell as special counsel for the purposes described herein as of February 2, 2015; and (c) granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York  
February 3, 2015

Respectfully submitted,  
/s/ Seanna R. Brown  
\_\_\_\_\_  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Seanna R. Brown  
Email: sbrown@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*